

Board Office Use: Legislative File Info.	
File ID Number	21-0193
Introduction Date	1/27/2021
Enactment Number	21-0151
Enactment Date	1/27/2021 er



Board Cover Memorandum

To Board of Education

From Kyla Johnson-Trammell, Superintendent
Curtiss Sarikey, Chief of Staff
Joshua R. Daniels, General Counsel

Meeting Date January 27, 2021

Subject Fiscal Sponsorship Agreement between the District and the Oakland Public Education Fund

Ask of the Board Approval by the Board of Education of a Fiscal Sponsorship Agreement between the District and the Oakland Public Education Fund (“OPEF”) under which the latter agrees to establish restricted funds, as necessary, on its books to receive and grant or spend donations of cash and other property for the support of OUSD and its students, subject to the discretion and control of OPEF’s Board, from January 28, 2021 through June 30, 2025.

Background & Discussion OPEF is a nonprofit that leads the development of community resources in Oakland public schools so that all students can learn, grow, and thrive. According to OPEF’s website, it has helped raise over \$200 million for Oakland kids, placed 10,000 volunteers in local classrooms, and fiscally sponsored more than 150 education-related projects. OPEF is the fiscal sponsor for the Oakland Undivided campaign and is a key partner to OUSD in its effort to solicit private donations.

The relationship between the District and the OPEF is governed by a fiscal sponsorship agreement. The basic structure of the relationship is that donations are made to OPEF, which holds them in separates funds specific to the projects or purposes for which those donations were made. OPEF then disburses the funds upon request by the District or project so long as doing so is consistent with the purpose of the donation and the fiscal sponsorship agreement.

The proposed new Fiscal Sponsorship Agreement, which is a complete rewrite of the existing agreement, maintains this basic structure and includes key updates and clarifications to various terms such as COVID reporting, fee structure, OPEF employees working on OUSD sites, and intellectual property.

Fiscal Impact There is no direct fiscal impact to the District. However, the Agreement includes a general Sponsorship Fee of 10% on all assets deposited into each Restricted Fund,

although the Sponsorship Fee would only be 5% for Limited-Service Projects. OUSD and OPEF may also agree on a different Sponsorship Fee on a case-by-case basis upon approval by the OPEF Board of Directors and by the OUSD Governing Board. OPEF may also deduct from each Restricted Fund:

- Any special or unusual costs (e.g., banking fees, penalties, late fees or stop-payment charges, or similar fees resulting from contributions),
- The cost to OPEF of any reports or other compliance measures required by funding sources,
- All costs of compensation and other costs incurred by OPEF from or in connection with providing employees and contractors to OUSD, including without limitation a flat, one-time \$495 orientation fee for each new employee, and
- The costs for any services not specified above that are requested by OUSD upon written agreement by OPEF and by OUSD's Office of General Counsel and the OUSD Superintendent or the Superintendent's designee (note that such written agreement need not be approved or ratified by the OUSD Governing Board so long as the terms of such a written agreement are not inconsistent with the terms and conditions of this Agreement).

Attachment(s)

- Fiscal Sponsorship Agreement between the District and the Oakland Public Education Fund

Fiscal Sponsorship Agreement

This Fiscal Sponsorship Agreement (“Agreement”), dated as of January 28, 2021 (the “Effective Date”), is between the Oakland Public Education Fund (“OPEF”) and the Oakland Unified School District (“OUSD”). (OPEF and OUSD are collectively referred to as the “Parties” and each individually as a “Party”.)

Recitals

- A. OPEF is a California nonprofit public benefit corporation exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “IRC”), and classified as a public charity under IRC Sections 170(b)(1)(A)(vi) and 509(a)(1). OPEF’s exempt purposes include advancing education in Oakland’s public schools so that all students can learn, grow, and thrive. In line with that mission, OPEF provides resources and services that further OPEF’s charitable purpose through its fiscal sponsorship programs.
- B. OUSD, a political subdivision of the State of California whose gross income is excluded from federal income tax under IRC Section 170(c)(1), currently operates over 80 schools in Oakland, California.
- C. In furtherance of OPEF’s charitable and educational purposes, OPEF’s Board of Directors has approved a Fiscal Sponsorship Program (“FSP”) under which OPEF will establish restricted funds on its books to receive and grant or spend donations of cash and other property for the support of OUSD and its students, subject to the discretion and control of OPEF’s Board.
- D. In this capacity, to the greatest extent legally permitted and as reflected in this Agreement, OPEF shall serve as a philanthropic “arm” for OUSD, providing resource development program management, and a dedicated repository and distribution mechanism for charitable contributions directed toward a variety of purposes in support of the shared missions of OUSD and OPEF.
- E. This Agreement manifests the intent of OPEF and OUSD to advance a shared vision in which OUSD schools have the resources they need to ensure that all students can thrive.

The Parties hereby agree as follows:

- 1. Term of the Agreement.** This Agreement shall commence as of the Effective Date and expire on June 30, 2025, unless extended by written agreement of the Parties or terminated earlier as provided in Section 13 below.
- 2. Scope of the FSP.** This Agreement is intended to apply to all fiscal sponsorship arrangements between OPEF and the totality of OUSD, including but not limited to OUSD’s central office, school sites, programs, and projects. The OPEF Board of Directors shall at all times have full discretion and control and governing authority over the FSP, as reflected in this Agreement. With written approval by OUSD’s Office of General Counsel and the OUSD Superintendent or the Superintendent’s designee, OPEF may also enter into separate fiscal sponsorship arrangements outside the scope of this Agreement for particular school sites, programs,

and projects within and ancillary to OUSD without ratification by the OUSD Governing Board so long as they do not involve a transfer of funds from OUSD or a school site to OPEF and are not otherwise inconsistent with the terms and conditions of this Agreement. Any aspect of such a fiscal sponsorship arrangement that is inconsistent with this Agreement may not and shall not legally bind OUSD.

3. Relationship of the Parties. The Parties are separate legal entities and neither Party is a subsidiary, program, project, or in any fashion or form under the control of the other. Under no circumstance is OUSD obligated to provide (and, absent written consent by both Parties, shall not provide) OPEF with operational support services, including but not limited to human resources, payroll, technology, and legal services. Nothing in this Agreement constitutes the naming of one Party (or any subgrantee of that Party) as an agent or legal representative of the other Party for any purpose whatsoever, except as specifically and to the extent set forth herein. Neither this Agreement nor any Project (as defined below) conducted hereunder will be deemed to create any relationship of agency, partnership, or joint venture between the Parties, and neither OUSD nor OPEF shall make any such representation to anyone.

4. SP Projects and OPEF Restricted Project Funds. The Parties contemplate and agree that the FSP will be comprised of a number of different restricted funds and activities, which may be identified by reference to individual OUSD schools, departments, or programs independent of specific schools, or otherwise (each a “Project”). For each Project, OPEF will establish a separate restricted fund on its books identified with reference to the Project and its charitable and educational purposes (each a “Restricted Fund”). OPEF shall deposit to each Restricted Fund all gifts, grants, contributions, and other assets that OPEF receives, from any source, for the charitable purposes of the Project supported by that Restricted Fund. All contributions received by OPEF for the purposes of a Project and placed in the corresponding Restricted Fund shall be reported as the income of OPEF on OPEF’s financial statements and tax returns. No donor to a Restricted Fund has, or shall at any time be given, advisory privileges within the meaning of IRC Section 4966 with respect to the assets in that Restricted Fund.

5. Restricted Fund Minimum Revenue Reserve. OPEF, in its discretion, may require at any time a minimum reserve dollar amount to be held in any given Restricted Fund. The minimum reserve may be required to ensure adequacy of funds to cover expenses, fees, and all other expenditures for that Restricted Fund. Any change to the minimum reserve dollar amount for one or more Restricted Funds may take effect no sooner than thirty (30) calendar days after OPEF provides OUSD with written notice that specifies which Restricted Fund(s) are to be affected.

6. Variance Power. The Parties, separately and together, intend for this Agreement to be interpreted to provide OPEF with variance powers necessary to enable OPEF to treat each Restricted Fund as OPEF’s asset in accordance with Accounting Standards Codification (ASC) paragraphs ASC 958-605-25-25 and -26, issued by the Financial Accounting Standards Board (FASB). Accordingly, OPEF retains the unilateral right to dispose of the assets in any Restricted Fund so as to accomplish the purposes of the Project corresponding to that Restricted Fund as nearly as possible within OPEF’s sole judgment, subject to any more specific donor-imposed restrictions on the charitable use of such assets. Because each Restricted Fund is held under the charitable trust doctrine for separately identified charitable and/or educational purposes of OPEF as understood by and with funding sources, the Parties intend that no assets in any given Restricted

Fund shall be subject to the claims of any creditor or to legal process resulting from activities either pertaining to another Project under the FSP or unrelated to the FSP altogether.

7. Use of Funds.

a. Purpose. Consistent with the charitable trust doctrine in California, the assets of any Restricted Fund shall be used only for the charitable and educational purposes the Parties have agreed to for that Restricted Fund and for which donors have given. Accordingly, OUSD may not use any funds it receives from OPEF under this Agreement for any purpose other than the purposes of the Restricted Fund from which such funds originated without first obtaining the written approval of OPEF, which OPEF may withhold for good cause. (For avoidance of doubt, the Parties stipulate that “good cause” for purposes of the preceding sentence shall be deemed to include, but not necessarily be limited to, compliance with charitable-trust restrictions on the assets held in a Restricted Fund.)

b. Manner. OPEF shall in most cases grant funds or goods purchased by OPEF with such funds to OUSD for purposes of the Restricted Fund. In some cases, OPEF will spend funds directly to provide services, such as to employ or retain Project personnel, but subject to certain restrictions as provided in this Agreement.

8. Budgets and Spending.

a. Fund Budgets. The Parties shall work together to prepare a budget for each Project. OPEF will not make any disbursements from a Restricted Fund until both Parties have accepted, in writing, a final budget for the Project to be supported from that Restricted Fund.

b. Fund Monitoring. OPEF, in cooperation with OUSD, shall monitor all applicable spending and cash balances of each Fund under this Agreement.

c. Fund Spending. Neither Party shall spend or otherwise obligate OPEF to pay for an amount or amounts exceeding the balance in the Restricted Fund or that is restricted for the purposes of another Project, nor shall either Party authorize or permit anyone to do so. OPEF shall disburse money from a Restricted Fund only for approved Project expenses and OPEF’s fees and charges as provided in Section 9 below. OUSD shall request disbursements from a given Restricted Fund solely for the Project associated with that Restricted Fund and in accordance with the approved budget for that Project.

9. OPEF Fees and Charges. As provided in this Section 9, OPEF will deduct an administrative fee (the “Sponsorship Fee”) as well as reimbursement for certain additional expenses of OPEF (the “Additional Charges”) from all amounts deposited to each Restricted Fund, which OPEF will transfer to its general fund to help defray its costs of administering that Restricted Fund. The Parties agree that the Sponsorship Fee and any applicable Additional Charges are necessary to help compensate and reimburse OPEF for its services in administering each Restricted Fund, each Project, and the FSP as a whole. Thus, any such compensation or reimbursement from a Restricted Fund (as well as interest on amounts held in the Restricted Funds, which shall be used for similar purposes) becomes unrestricted rather than restricted assets when paid to OPEF.

a. Regular Sponsorship Fee. Except as otherwise provided herein, OPEF shall charge a flat Sponsorship Fee of 10% on all assets deposited to each Restricted Fund.

b. Limited-Service Fund Sponsorship Fee. From time to time, OPEF may sponsor a Project where either:

- i. OPEF's role is limited to administering and making a limited number of grants in support of the Project's purposes from the applicable Restricted Fund, without providing any further services or incurring any other expenses (beyond minimal accounting and the administrative expenses associated with OPEF's ownership and oversight of the Restricted Fund); or
- ii. the Restricted Fund and the associated Project activity are not intended to last for more than sixty (60) business days from the date when funds are first deposited into the Restricted Fund.

With such Projects ("Limited-Service Projects"), the Sponsorship Fee shall be limited to 5% of the amounts deposited in the respective Restricted Fund. Limited-Service Projects must be identified as such in writing by the Parties before OPEF accepts any amounts into the applicable Restricted Funds and before any grant or similar agreement is signed with any contributor to such Restricted Funds. For avoidance of doubt, Projects involving OUSD school sites shall be subject to the regular 10% Sponsorship Fee and shall not qualify as Limited-Service Projects.

c. Case-by-Case Sponsorship Fee. Notwithstanding the above, the Parties may from time to time agree in writing on a different Sponsorship Fee with respect to a specific Project on a case-by-case basis upon approval by the OPEF Board of Directors and by the OUSD Governing Board.

d. Additional Charges. In addition to the Sponsorship Fee, OPEF may deduct from each Restricted Fund:

- i. Any special or unusual costs to OPEF, including without limitation banking fees, penalties, late fees or stop-payment charges, or similar fees resulting from contributions;
- ii. The cost to OPEF of any reports or other compliance measures required by funding sources;
- iii. All costs of compensation and other costs incurred by OPEF from or in connection with providing employees and contractors to OUSD under Section 11.d below, including without limitation a flat, one-time \$495 orientation fee for each new employee (provided that OPEF may increase this fee but only with timely written notice to OUSD); and
- iv. The costs for any services not specified in (i)-(iii) above that are requested by OUSD upon written agreement by OPEF and by OUSD's Office of General Counsel and the OUSD Superintendent or the Superintendent's

designee. Such written agreement need not be approved or ratified by the OUSD Governing Board so long as the terms of such a written agreement are not inconsistent with the terms and conditions of this Agreement. Any aspect of such a written agreement that is inconsistent with this Agreement may not and shall not legally bind OUSD.

Before it may deduct any individual Additional Charge in an amount over \$500 under (i) or (ii) from a Restricted Fund, OPEF must first submit a written notice to OUSD detailing the amount and purpose of the Additional Charge and must receive written approval from OUSD to deduct the Additional Charge. OUSD shall not unreasonably withhold such approval.

10. Reporting.

a. Upon request from OPEF, OUSD shall provide OPEF with reports describing OUSD projects, programs, and activities funded through this Agreement. The reports must be in a form and content that is acceptable to OUSD and OPEF.

b. Upon request from OUSD, OPEF shall provide OUSD with expenditure and account balance statements pertaining to a Restricted Fund. The report must be in a form that is acceptable to OUSD and OPEF and may be requested no more frequently than quarterly.

c. Each Party will provide reasonable and prompt assistance to the other Party in preparing and submitting any reports required by contributors to a Restricted Fund.

11. Project Responsibilities.

a. General. OUSD will be solely responsible and liable for all activities supported by the assets granted by OPEF to OUSD from any Restricted Fund, the content of any product created or services performed with those grant funds, and the manner in which any such product may be disseminated or any such services performed. This responsibility extends to all liabilities to third parties incurred by OUSD in connection with its carrying out of Project activities and shall include but not be limited to any and all claims against OUSD, whether asserted or unasserted, any performances due under OUSD contracts, goods to be delivered, and services to be performed. OUSD shall repay to OPEF any amount of funds granted by OPEF that are used in violation of this Agreement, including without limitation amounts not spent or committed for the purposes of the applicable Restricted Fund under Section 7.a.

b. Obligations to Funders. The Parties acknowledge that OPEF, as owner of the Restricted Funds, will generally have a direct contractual relationship with contributors to Restricted Funds. Nevertheless, OUSD agrees to assist OPEF in meeting its obligations to such contributors by, for example, assembling required reports on Project activities and finances for OPEF to provide to private-foundation grantors.

c. Payments to OUSD Project Vendors. If OUSD asks OPEF to make any payment from a Restricted Fund directly to an OUSD-engaged vendor for Project activities, OPEF will do so only as a convenient means of disbursing grant funds for the benefit of the Project and not under any legal obligation to OUSD's vendors. All such payments by OPEF are voluntary and subject to the availability of revenues deposited in the applicable Restricted Fund. If OPEF agrees to make

such a payment, it shall maintain a written record of such payment and shall provide OUSD a copy of that written record upon request by OUSD.

d. Provision of OPEF Employees and Contractors. If necessary for certain Projects, as the Parties may agree in writing in advance, OPEF may provide employees and/or independent contractors to assist OUSD in the performance of Project activities, although the Parties expect and agree that such situations should be uncommon and should generally arise only where required by a Project funder, and that OUSD itself shall otherwise be the employer of record or contracting party for Project personnel. In no event shall OUSD request or OPEF provide employees and/or independent contractors to assist OUSD in the performance of Project activities if doing so were to violate federal or state law or any collective bargaining agreement.

On or about April 1 and October 1 of each year, OPEF shall provide the OUSD Superintendent or designee, OUSD's Office of General Counsel, and OUSD's Talent Department with a list of all OPEF employees and contractors paid, in whole or in part, from any Restricted Fund. The list shall also include whether an individual is an employee or contractor, each employee's FTE (or hours) and rate of compensation or each contractor's billing rate and not-to-exceed amount, the site(s) or department(s) the employee/contractor is assigned, and OUSD employee and Project on which the OPEF employee/contractor is provided to assist.

i. The Parties agree that OPEF shall not be asked to provide, and shall not provide, employees or contractors to do work performed by existing OUSD employees, positions, or job classifications; provided, however, that OUSD shall have the sole responsibility, in requesting employees or contractors from OPEF to work on Project activities, to enable OPEF's compliance with this limitation, and OPEF shall not be liable for any breach of this Section 11.d.i.

ii. With respect to employees and independent contractors provided to OUSD under this Section 11.d, OPEF will be the employer of record of the employees and have privity of contract with the independent contractors. The Parties agree that OPEF's role as the employer of record will include the following: (i) at the request and on the advice of OUSD, hiring the employees and contractors or providing existing OPEF employees or contractors to OUSD for Project work; (ii) determining whether to contract with an individual as an employee of OPEF or an independent contractor; (iii) compensating such employees and contractors for their Project work at OUSD from the applicable Restricted Fund(s) at OPEF; and (iv) at the further request of OUSD or after consulting with OUSD, terminating the engagement of such employees and contractors on the Project(s) to which they have been assigned; provided, however, that OPEF shall have the sole legal authority and responsibility to hire or to terminate any such employee or contractor, regardless of OUSD's request or advice, and OPEF may terminate an employee or contractor engagement on a Project if OPEF determines in its sole discretion that such termination is in the best interests of OPEF and a consultation with OUSD is not practical before such termination.

iii. All Project employees shall be governed by the workplace policies of their employer of record, except as OUSD and OPEF shall otherwise agree in writing.

OUSD employees and contractors working in a supervisory capacity over any OPEF employees or contractors shall be required to attend a training, in such format as the Parties agree, that concerns supervising OPEF employees and contractors and related issues.

iv. Notwithstanding OPEF's status as the employer of record or the direct counterparty in contracts with independent contractors as provided under this Section 11.d, the Parties acknowledge that OUSD will be responsible for assigning work to and supervising any such employees or contractors in the performance of their duties or tasks. In such situations, OUSD shall, without limitation, be responsible for entering the timesheets of such employees or, if applicable, contractors.

v. OPEF shall regularly, but no less than annually, provide clear written notice to those OPEF employees and contractors who assist OUSD in the performance of Project activities under this Section 11.d, that such employees and contractors are employees and contractors of record for OPEF. OPEF shall require such employees and contractors to confirm, in writing, receipt of such notice. Each Party shall verbally remind such employees and contractors of their employment of record by OPEF in any trainings held for such employees and contractors.

vi. Each of OUSD and OPEF (the "Indemnifying Party") shall defend, indemnify, and hold harmless the other Party (the "Indemnitee") and its officers, directors, trustees, employees, and agents from and against any and all claims, liabilities, losses, and expenses (including reasonable attorneys' fees) arising from or in connection with any act or omission by the Indemnifying Party, its officers, directors, trustees, employees, volunteers, agents, and personnel, except to the extent that such claims, liabilities, losses, or expenses arise from or in connection with any act or omission of the Indemnitee or its officers, directors, trustees, employees, volunteers, or agents (excluding with respect to OPEF as the Indemnitee, acts or omissions any employee(s) and contractor(s) provided to OUSD under this Section 11.d).

12. Fundraising and External Communications.

a. Fundraising. OUSD may solicit gifts, contributions, and grants to any Restricted Fund, with such solicitation to be publicly identified as being in support of the purposes of that Restricted Fund. OUSD acknowledges, however, that OPEF is the owner of each Restricted Fund, that any such fundraising will be done on OPEF's behalf, and that California Government Code Section 12599.6(b) requires OPEF to establish and exercise control over fundraising activities conducted for its benefit. Accordingly, OUSD agrees that OUSD's choice of funding sources to be approached, the locations where fundraising occurs, and the text of OUSD's fundraising materials, are all subject to OPEF's prior written approval. Furthermore, all fundraising communications from OUSD must include an express disclosure of OPEF's variance power under Section 6 above. All grant agreements, pledges, or other commitments with funding sources to a Restricted Fund must be approved and executed by OPEF. Except as the Parties may otherwise agree in writing, the cost of any reports or other compliance measures required by such funding

sources may be deducted as an Additional Charge from the applicable Restricted Fund at OPEF pursuant to Section 9.d.ii.

b. Branding, Materials, and Publicity. The Parties will coordinate public outreach materials to enhance their collaboration under this Agreement for the benefit of their respective organizations. All materials and external communications (including, without limitation, any websites, letterheads, brochures, program materials, grant proposals, fundraising solicitations, donation acknowledgements, or exhibition or event programs) related to activities under this Agreement must communicate the fiscal sponsor relationship between OUSD and OPEF.

c. Non-Representation and Media Inquiries. Neither Party shall hold itself out as a representative of, or purport to speak or act on behalf of the other, including, without limitation, making statements that purport to be official positions of the other organization. Each Party shall advise the other organization promptly of any media inquiries received regarding the other.

d. OPEF Use of OUSD Works, Name, and Image.

i. Nothing in this Agreement is intended to restrict OPEF's right to describe its sponsorship of the FSP or its work with OUSD in its internal and external communications. OPEF shall own all right, title, and interest, including, without limitation, copyright, in any such OPEF communications, and OUSD shall not be entitled to inspect or approve the use of such communications or receive payment for their use. This Section 12.d.i shall not apply to any misrepresentations regarding OUSD.

ii. OPEF may use excerpts of OUSD's work in digital and print communications and promotional materials if (i) OPEF receives prior written permission from the OUSD's Office of General Counsel and the OUSD Superintendent or designee and (ii) OPEF properly credits OUSD.

13. Termination

This Agreement shall terminate in its entirety or with respect to any particular Project upon any of the following:

- a.** By mutual written agreement of the Parties;
- b.** Thirty (30) days after written notice by one party to the other (the "Breaching Party") of a material breach of this Agreement, which breach the Breaching Party has not corrected by the end of the thirty (30) days after written notice; or
- c.** Upon ninety (90) days' notice by either Party for any reason.

Regardless of the method of termination, if the objectives of the Project can still be accomplished, OPEF shall promptly grant amounts remaining in the affected Restricted Fund to a nonprofit entity, reasonably acceptable to both Parties, which is tax-exempt under IRC Section 501(c)(3), is not classified as a private foundation under IRC Section 509(a), is willing to sponsor the purposes of the Project, has charitable purposes compatible with the purposes of the Project, and has the financial and administrative capacity to competently manage a fund restricted to the purposes of

the Project (“a Successor”). OUSD itself shall be eligible to be a Successor. If no Successor is found within a reasonable time, OPEF may dispose of the Project assets in any manner consistent with applicable tax and charitable trust laws.

14. Acknowledgments

a. Other OPEF Fiscal Sponsorships. OUSD acknowledges and agrees that OPEF may serve or sponsor other organizations or projects whose interests may differ from those of OUSD, including, without limitation, parties with whom OUSD competes for funding, has a current or potential programming relationship, or has markedly different strategies or viewpoints. The Parties agree that nothing in this Agreement is intended to prohibit or otherwise restrict OPEF’s ability to enter into or continue such activities and relationships. Annually, OPEF shall inform OUSD of any agreements between OPEF and another organization or project that in OPEF’s good faith judgment competes for funding with OUSD.

b. No Guarantee. OUSD acknowledges that OPEF does not guarantee the success of fund development and fund acquisition strategies for OUSD, the fulfillment of OUSD’s mission, or the accomplishment of Project objectives, and that OPEF is not making any promises or guarantees about fundraising, visibility, effectiveness, or other matters.

c. Capacity and Rights. The Parties acknowledge that in signing this Agreement each shall exercise its rights and responsibilities under this Agreement solely in furtherance of their shared charitable and educational purposes.

d. No Obligation to Provide Financial Support. Consistent with OPEF’s variance power and ownership of the assets in the Restricted Funds, OUSD acknowledges that OPEF has no obligation to provide any financial support to OUSD in any form, including, without limitation, making loans or grants from any Restricted Fund, advancing cash, covering direct expenses, or deferring or waiving rights to fees.

e. Intellectual Property. It is the intention of the Parties for any tangible or intangible property, including intellectual property, such as copyrights, obtained from third parties or created in connection with a Project shall be or become the property of OUSD. To the extent that any such property is owned by OPEF, such as by virtue of being a work for hire created by an employee of OPEF working on a Project, OPEF agrees to take reasonable steps to assign ownership of such property to OUSD.

15. Incident/Accident/Mandated Reporting.

a. Significant Accident or Adverse Incident. To the extent OPEF reasonably determines it is legally permissible, it shall notify OUSD within twelve (12) hours of learning of any significant accident or adverse incident related to any Project. To the extent OUSD reasonably determines it is legally permissible, it shall notify OPEF within twelve (12) hours of learning of any significant accident or adverse incident that directly and immediately threatens or has threatened the health or safety of an OPEF employee or contractor.

Examples of a significant accident or adverse incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual

exposure to a communicable disease such as COVID-19. For any accident or incident that occurs under OPEF's supervision, OPEF shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD, which OUSD shall provide to OPEF in connection with the execution of this Agreement.

b. Coronavirus/COVID-19. OPEF agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible or actual exposure of OUSD employees to COVID-19 by any employee, subcontractor, agent, or representative of OPEF and information necessary to perform contact tracing. Likewise, OUSD will promptly provide information to OPEF regarding any possible or actual exposure of OPEF employees to COVID-19 on OUSD property, in connection with OUSD or Project activities conducted by OUSD personnel, or by any employee, subcontractor, agent, student, or representative of OUSD.

c. Mandated Reporting. To the extent that an employee, subcontractor, agent, or representative of OPEF is included on the list of mandated reporters found in Penal Code section 11165.7, OPEF agrees to inform the individual, in writing that they are a mandated reporter, and describe the associated obligations to report suspected cases of abuse and neglect pursuant to Penal Code section 11166.5.

16. General Provisions.

a. Insurance. Each Party will maintain insurance coverage sufficient to cover the activities, risks, and potential omissions of its activities under this Agreement in accordance with generally-accepted industry standards and as required by law. OUSD will ensure its subgrantees and subcontractors maintain insurance coverage consistent with this section.

b. OUSD Personnel. OUSD shall undertake reasonable efforts to notify OPEF of any change in key OUSD personnel involved in any Project, program or activity undertaken pursuant to this Agreement.

c. OUSD Superintendent Designee. From time to time, as provided above, OUSD may take actions and transmit certain approvals, permissions, notices, and other communications through a designee of the OUSD Superintendent. In each such instance, OUSD's Superintendent or General Counsel shall provide written confirmation to OPEF in advance (if they have not already done so) that such person is authorized to act on behalf of OUSD's Superintendent with respect to such activity. OPEF shall be entitled to rely conclusively on any such unrevoked confirmation with respect to future acts by the same individual purporting to be on behalf of OUSD's Superintendent.

d. Non-Discrimination. It is the policy of OUSD that in connection with all work performed under OUSD contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, OPEF agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code Section 12900 and Labor Code Section 1735 and the aforementioned OUSD policy. In addition, OPEF agrees to require like compliance by all its contractor(s). OPEF shall not engage in unlawful discrimination in employment on the basis of

actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.

e. Conflict of Interest.

i. OPEF shall abide by and be subject to IRC Section 4958 and California Corporations Code Section 5233.

ii. OPEF affirms to the best of its knowledge that there exists no actual or potential legal financial conflict of interest for OPEF, its employees, or its contractors in entering this Agreement. In the event of any event or change that might indicate or create such a conflict of interest in OPEF's reasonable judgment, OPEF will timely bring such event or change to OUSD's attention in writing. OPEF will investigate, in good faith, any such reasonably possible conflict of interest that OUSD brings to OPEF's attention.

iii. Through its execution of this Agreement, OPEF acknowledges that it is familiar with the provisions of Section 1090 *et seq.* and Section 87100 *et seq.* of the Government Code, and certifies that as of the Effective Date it does not know of any circumstances involving the execution of this Agreement which constitute a violation of said provisions. In the event OPEF receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, OPEF will timely notify OUSD in writing. OPEF will investigate, in good faith, any reasonably possible violations of Section 1090 *et seq.* and Section 87100 *et seq.* of the Government Code that OUSD brings to OPEF's attention.

f. Prohibited Sponsorship Activities. All of the assets received by OPEF under the terms of this Agreement shall be devoted to the purposes of the Restricted Fund into which they are deposited, within the tax-exempt purposes of OPEF. No activities of any Project shall involve, and no assets from a Restricted Fund and no services provided by OUSD hereunder shall be used in, (i) any attempt to influence legislation within the meaning of IRC Section 501(c)(3), (ii) to participate or intervene in any political campaign on behalf of or in opposition to any candidate for public office, (iii) to induce or encourage violations of law or public policy, (iv) to cause any private inurement or improper private benefit to occur, or (v) to take any other action inconsistent with IRC Section 501(c)(3).

g. No Rights in Third Parties. This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.

h. Assignment. Neither party shall assign its rights or delegate its duties under this Agreement to anyone without the prior written consent of the other party, and any attempted assignment in violation of this sentence shall be null and void.

i. Provisions Required By Law Deemed Inserted. Each and every provision of law and clause required by law to be inserted in this Agreement, including without limitation any provision necessary for donors to OPEF to be able to take a charitable deduction under IRC Section 170 for such donations, shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.

j. Entire Agreement. This Agreement, together with its exhibits, expresses the Parties' final, complete, and exclusive agreement, and supersedes all prior or contemporaneous written and oral agreements, negotiations, communications, courses of dealing, or understandings between the Parties relating to its subject matter. If there are any differences between this Agreement and any other documents, communications, OPEF policies, or any other materials, then this Agreement will control.

k. Amendment. This Agreement may be amended only as described in a written document properly approved and signed by the Parties that refers specifically to this Agreement and recites that it is amending this Agreement.

l. Severability. If any provision in this Agreement is held invalid or unenforceable, the other provisions shall remain enforceable, and the invalid or unenforceable provision shall be considered modified so that it is valid and enforceable to the maximum extent permitted by law.

m. Waiver. Waiver of any breach or provision of this Agreement shall not be considered a waiver of any later breach or future waiver of any provision of this Agreement.

n. Governing Law; Jurisdiction. This Agreement and all claims arising out of or from this Agreement shall be governed by the laws of the State of California, without regard to conflicts of laws rules. The Parties consent to the exclusive jurisdiction of the state and federal courts located in Alameda County, California.

o. Counterparts and Electronic Signature. This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either Party and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code Section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing Party and the receiving Party may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been received. Through its execution of this Agreement, each Party waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code Section 16.5 and the regulations promulgated therefrom.


p. Agreement Publicly Posted. This Agreement, its contents, and all external documents expressly incorporated herein are public documents and will be made available by OUSD to the public online via the Internet.

q. Signature Authority. Each Party hereby represents and warrants that it has the full power and authority to enter into and perform this Agreement, and that the person(s) signing this Agreement on behalf of each Party has been given the proper authority and empowered to do so.

r. Contract Contingent on Governing Board Approval. OUSD shall not be bound by the terms of this Agreement unless and until it has been formally approved by OUSD's Governing Board.

IN WITNESS WHEREOF, the Party hereto agree and execute this Agreement as of the Effective Date:

OAKLAND PUBLIC EDUCATION FUND

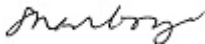
By:  Alexandria Medina

Name: Alexandria Medina

Title: Executive Director

OAKLAND UNIFIED SCHOOL DISTRICT

By:



Shanthi Gonzalies
Board President



Kyla Johnson-Trammell, Superintendent